

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of)
)
Amendment of Part 90 of the)
Commission's Rules to Facilitate)
Future Development of SMR Systems)
in the 800 MHz Frequency Band)

PR Docket No. 93-144

TO: The Commission

REPLY COMMENTS OF THE
UTILITIES TELECOMMUNICATIONS COUNCIL

Pursuant to Section 1.415 of the Commission's Rules, the Utilities Telecommunications Council (UTC) hereby submits its Reply Comments to the Federal Communications Commission's (FCC) Notice of Proposed Rule Making (NPRM) in the above-referenced docket.^{1/} In the NPRM, the Commission proposes to encourage the development of wide-area Specialized Mobile Radio (SMR) systems by establishing an Expanded Mobile Service Provider (EMSP) licensing approach. In its Reply Comments, UTC reiterates its support for the Commission's proposed limitation on SMR inter-category sharing and urges the Commission to expand initial eligibility for EMSP licenses beyond existing SMR licensees.

^{1/} Pursuant to this NPRM, Reply Comments are to be filed by August 5, 1993.

UTC, as the national representative on communications matters for the nation's electric, gas, water and steam utilities, and natural gas pipelines, filed its Comments on July 19, 1993. In its Comments, UTC expressed no opinion as to the desirability of establishing an EMSP licensing approach, but urged the Commission to adopt rules that promote spectrum efficiency, diversity of ownership and innovation. UTC recommended that the Commission mandate the use of moderately-sized EMSP service territories, such as Basic Trading Areas (BTAs), to promote efficiency and diversity in ownership. UTC strongly opposed the Commission's proposal to initially restrict EMSP eligibility to existing SMR licensees. UTC supported the Commission's proposed minimum coverage requirements and urged the Commission to establish minimum loading criteria for EMSP systems. UTC also supported the Commission's proposal not to permit the incorporation of non-SMR channels into EMSP systems and opposed permitting EMSP licensees to retain non-SMR channels. Finally, UTC supported the Commission's proposed limitations on inter-category sharing by traditional SMR licensees.

Initial Licensing Should be Open to All Part 90 Eligibles

UTC reiterates its opposition to the Commission's proposal to initially restrict EMSP licenses to those entities who were licensees of 800 MHz SMR systems on or before May 13, 1993. This proposal unnecessarily restricts eligibility by non-SMR entrepreneurs. Southwestern Bell Corporation (SWB) joins in this

opposition. SWB states that "[t]here is no sound reason for giving licensees such a large exclusive territory based on existing licenses for particular channels in any portion, no matter how small, of that territory."^{2/} Instead, SWB argues that EMSP licensing should be opened to all "interested and qualified providers."^{3/} PacTel Paging (PacTel) agrees, finding that the public interest would be better served by permitting open entry and full competition.^{4/}

UTC disagrees with the statements of Fleet Call, Inc. (Fleet Call) that the initial eligibility limitation is necessary because only current SMR licensees would likely establish economically viable systems.^{5/} According to Fleet Call, EMSP licensees would be unable to operate in the major metropolitan areas of the service territory because they would have to protect existing systems. Therefore, entities not already operating in the major metropolitan areas would be economically disadvantaged.^{6/} UTC concedes that allowing non-SMR licensees to initially apply for EMSP licenses may not remove the advantage

^{2/} SWB, p. 19.

^{3/} SWB, p. 19.

^{4/} Pactel, p. 5.

^{5/} Fleet Call, p. 10.

^{6/} The effect of this "initial" entry restriction would be to prevent non-SMRs from ever obtaining EMSP licenses because there would be no economically viable channels left after the initial licensing round.

held by the existing SMR licensees. However, it would remove some of the inequity inherent in the initial eligibility restriction. There is, after all, a big difference between being economically disadvantaged in the market and being prohibited from entering the market. Furthermore, non-SMR EMSP licensees could easily service the major metropolitan areas through agreements with the SMR licensees operating in those areas. Finally, because non-SMR licensees would be in a similar position to SMR licensees which do not operate in the major metropolitan areas, there is no reason to draw an arbitrary distinction between the two by permitting only the latter to initially apply for EMSP licenses. Each non-SMR license will simply have to decide for itself whether the available market opportunities are worth the risks associated with applying for an EMSP license in a market already served by other SMR systems.

The National Association of Business and Educational Radio, Inc. (NABER) also supports the initial eligibility restriction, arguing that the co-channel protection criteria would prevent non-SMR licensees from offering wide-area coverage on already operational channels.^{2/} However, as stated above, the absence of a level playing field is insufficient to justify the proposed entry restriction.

^{2/} NABER, p.11.

Inter-Category Sharing Must Be Restricted

UTC supports the FCC's proposal to prohibit the incorporation of non-SMR channels into EMSP licenses. Such a conversion of non-SMR channels into SMR channels is not necessary in light of the proposed EMSP rules which permit the aggregation of numerous SMR channels in each service territory. The Associated Public-Safety Communications Officers, Inc. (APCO) also supports this proposal, stating that allowing the incorporation of General Category channels into EMSP licenses would increase the risk of interference to public safety operations.^{8/}

UTC disagrees with NABER's claim that prohibiting the re-use of the non-SMR frequencies in wide-area SMR systems would inhibit the introduction of spectrum efficient, advanced technologies.^{9/} NABER seems to ignore the fact that EMSP licensees will obtain numerous additional SMR channels to re-use on a wide-area basis, thus negating the need for the re-use of non-SMR channels. NABER further argues that the Commission's proposal would prevent SMR operators which are only licensed on non-SMR channels through inter-category sharing, and which therefore have overcome obstacles to establish trunked systems, from establishing EMSP systems. UTC fails to see how the failure to expand the permissible use of non-SMR channels by SMR licensees is

^{8/} APCO, p. 2.

^{9/} NABER, p. 7.

inequitable, especially in light of the demand for these channels by traditional private land mobile radio (PLMR) licensees. What NABER appears to be requesting is not a continuation of the existing inter-category sharing, but rather, an expansion of the number of SMR channels. If that is indeed NABER's intention, then it is inappropriate to this proceeding.

Although UTC agrees with E.F. Johnson Company (EFJ) that sufficient channels should remain available to meet the needs of non-SMR users, UTC disagrees with EFJ's conclusion that the use of non-SMR frequencies by EMSP licensees "would not likely have a significant negative impact on non-SMR users."^{10/} In fact, there would be a significant negative impact. The increased demand for SMR channels to create wide-area systems would increase the demand for out-of-category sharing by SMR licensees. Without a limitation on the use of non-SMR channels, therefore, there would be nothing to prevent EMSP licensees from depleting the General Category pool of channels available for traditional PLMR operations.

Similarly, UTC opposes the American Mobile Telecommunications Association, Inc.'s (AMTA) suggestion that non-SMR channels be incorporated in EMSP licenses because these channels are available to SMR licensees on a primary basis and are already widely-used in traditional and wide-area SMR

^{10/} EFJ, p. 7.

systems.^{11/} AMTA's comments provide no reasoning as to why the currently-authorized use of non-SMR channels by SMR licensees should be expanded. Moreover, because an increase in the use of non-SMR channels by SMR licensees would decrease the number of these channels that are available for traditional PLMR licensees, the use of these channels must be strictly limited.

UTC proposes that the Commission prohibit the continued use of non-SMR channels by EMSP licensees. There is no need to permit the sharing once EMSP licensees are able to operate a greater number of frequencies over a larger geographic area pursuant to the proposed rules. After an EMSP license is granted, therefore, there is no longer a need for inter-category sharing of any non-SMR channels.

UTC supports the Commission's proposal to limit inter-category sharing by traditional SMR licensees to General Category frequencies. This will prevent the increased demand for SMR channels caused by EMSP licensing from creating further frequency congestion in the other PLMR services. Limitations on inter-category sharing are needed to ensure that traditional PLMR users have available spectrum to meet their own important internal requirements.^{12/} APCO agrees, noting that permitting expanded

^{11/} AMTA, p. 9.

^{12/} For example, utilities use mobile radio as a vital link in their communications systems for field crew dispatch, nuclear plant security and safety for transmission line crews and meter

Conclusion

The Commission should eliminate its proposed restriction on initial EMSP eligibility and allow the marketplace to decide which entities may offer EMSP service. The Commission should also restrict inter-category sharing by both EMSP and traditional SMR licensees to prevent the increased demand for SMR channels caused by EMSP licensing to increase the frequency congestion of the other PLMR services.

WHEREFORE, THE PREMISES CONSIDERED, the Utilities Telecommunications Council respectfully requests the Commission to take action in this docket consistent with the views expressed herein.

Respectfully submitted,

**UTILITIES TELECOMMUNICATIONS
COUNCIL**

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